

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

DANIEL POTTER,

Plaintiff,

v.

JOHN JORDAN, et al.,

Defendants.

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No. 1:17-cv-116-ACL

MEMORANDUM AND ORDER

This matter is before the Court on the motion of plaintiff Daniel Potter, a prisoner, for leave to proceed in forma pauperis in this civil action. The Court has reviewed plaintiff's financial information, and will grant the motion and waive the initial partial filing fee. In addition, as will be explained below, plaintiff will be given the opportunity to submit an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid. *Id.*

In support of the instant motion, plaintiff submitted a “Detainee Transaction History” form showing that his account balance is \$0.00. For this reason, the Court will waive the initial partial filing fee. *See* 28 U.S.C. § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). However, plaintiff is not excused from paying the filing fee. The agency having custody of plaintiff will be directed to begin forwarding payments from plaintiff’s inmate account, pursuant to 28 U.S.C. § 1915(b)(2), until the \$350.00 filing fee is paid in full.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do,” nor will a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

When conducting initial review pursuant to § 1915(e)(2), the Court must accept as true the allegations in the complaint, and must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the tenet that a court must accept the allegations as true does not apply to legal conclusions, *Iqbal*, 556 U.S. at 678, and affording a pro se complaint the benefit of a liberal construction does not mean that procedural rules in ordinary civil litigation must be interpreted so as to excuse mistakes by those who proceed without counsel. *See McNeil v. U.S.*, 508 U.S. 106, 113 (1993). Even pro se complaints are required to allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980); *see also Stone v. Harry*, 364 F.3d 912, 914-15

(8th Cir. 2004) (federal courts are not required to “assume facts that are not alleged, just because an additional factual allegation would have formed a stronger complaint”).

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Named as defendants are John Jordan (the Sheriff of Cape Girardeau County), James Mulcahy (a Captain at the Cape Girardeau County Jail), T.C. Stevens (a Lieutenant at the Cape Girardeau County Jail), Ruth Ann Dickerson (a Captain at the Cape Girardeau County Jail), Tina Henderson (a Lieutenant at the Cape Girardeau County Jail), the Cape Girardeau County Jail, Kristopher Seib (an officer at the Cape Girardeau County Jail), Aaron Cheney (an officer at the Cape Girardeau County Jail), and Unknown Officers #3-10 (officers at the Cape Girardeau County Jail). Plaintiff sues all defendants in their official and individual capacities.

Plaintiff states he was incarcerated at the Cape Girardeau County Jail from May 18, 2017 to July 7, 2017. He claims he was subjected to unhygienic conditions of confinement during his incarceration. Specifically, plaintiff alleges that the walls and doors were filthy, the toilets were stained with waste matter, the cell temperatures were freezing, and discolored water came from the faucets. Plaintiff alleges that there was an atmosphere of racial tension, and that thefts and assaults occurred. He alleges the food was inedible, he was not given recreation, and he was assaulted by other inmates on different occasions and not provided medical care afterwards. Plaintiff also alleges that “the defendants” enacted a “postcard only policy” that prevented him from receiving books, magazines, newspapers, and mail from family and friends. He alleges he was not given a change of clothing, hygiene items, necessary medication, cleaning supplies, or an adequate mattress.

Discussion

Plaintiff attempts to bring multiple unrelated claims against not one defendant, but against eight named defendants and eight fictitious parties. Rule 20(a)(2) of the Federal Rules of Civil Procedure governs joinder of defendants, and provides as follows:

Persons . . . may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.

Therefore, plaintiff cannot join, in a single lawsuit, unrelated claims against different defendants. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.”). “Unrelated claims against different defendants belong in different suits, . . . [in part] to ensure that prisoners pay the required filing fees - for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees.” *Id.*

Rule 18(a) of the Federal Rules of Civil Procedure, which governs joinder of claims, provides:

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

Therefore, multiple claims against a single defendant are valid.

Because plaintiff is proceeding pro se, the Court will give him an opportunity to file an amended complaint. In so doing, plaintiff should select the transaction or occurrence he wants to pursue, and limit the facts and allegations to the defendant(s) involved in it. Plaintiff should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See Fed. R. Civ. P. 20(a)(2)*. Alternatively, plaintiff may choose a single

defendant and set forth as many claims as he has against that defendant. *See* Fed. R. Civ. P. 18(a).

If plaintiff wishes to pursue additional claims against additional defendants, and the claims do not arise from the same transaction or occurrence he has chosen to advance in his amended complaint, he must file each claim as a new civil action on a separate complaint form, and either pay the filing fee or file a motion for leave to proceed in forma pauperis.

Plaintiff must prepare the amended complaint using a Court-provided form, and he must follow Rules 8 and 10 of the Federal Rules of Civil Procedure. In the “Caption” section of the form complaint, plaintiff should write the name of the defendant(s) he wishes to sue. Plaintiff should also indicate whether he intends to sue each defendant in his or her individual or official capacity.¹ In the “Statement of Claim” section, plaintiff should begin by writing the defendant’s name. In separate, numbered paragraphs under that name, plaintiff should: (1) set forth the facts that support his claim against that defendant; and (2) to the extent he knows it, state what constitutional or federal statutory right(s) that defendant violated. If plaintiff is suing more than one defendant, he shall proceed in this manner with each one, separately writing each individual defendant’s name and, under that name, in numbered paragraphs, the factual allegations specific to that particular defendant and the right(s) that defendant violated.

Plaintiff’s failure to make specific and actionable factual allegations against any defendant will result in that defendant’s dismissal from this case.

Plaintiff shall have twenty-one (21) days from the date of this Order to file an amended complaint. Plaintiff is warned that the filing of the amended complaint completely replaces the original. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005).

¹ The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Docket No. 2) is **GRANTED**. Pursuant to 28 U.S.C. § 1915(b)(4), the initial partial filing fee is waived.

IT IS FURTHER ORDERED that the institution having custody of plaintiff shall, whenever the amount in plaintiff's prison account exceeds \$10.00, send monthly payments that equal 20 percent of the funds credited to the account the preceding month to the United States District Court for the Eastern District of Missouri Clerk's office, pursuant to 28 U.S.C. § 1915(b)(2), until the filing fee of \$350.00 is paid in full.

IT IS FURTHER ORDERED that plaintiff shall submit an amended complaint, in accordance with the instructions set forth in this Memorandum and Order, no later than twenty-one (21) days from the date of this Memorandum and Order.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff two (2) blank forms for the filing of a prisoner civil rights complaint, and two (2) form motions for leave to proceed in forma pauperis. Plaintiff may request additional forms from the Clerk, as needed.

If plaintiff fails to timely comply with this Memorandum and Order, the Court may dismiss this action, without prejudice and without further notice.

/s/ Abbie Crites-Leoni
ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE

Dated this 19th day of September, 2017.